

Chapter DWD 129

BENEFIT CLAIMING PROCEDURES

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Note: Chapter ILHR 129 was created by emergency rule effective 1-8-84. Chapter ILHR 129 was renumbered Chapter DWD 129 under s. 13.93 (2m) (b) 1., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1998, No. 498.

DWD 129.001 Definitions. Unless the context clearly indicates a different meaning, the definitions in ch. DWD 100 apply to this chapter.

History: Cr. Register, September, 1995, No. 477, eff. 10-1-95.

DWD 129.01 Notice of unemployment. (1) INITIATING A CLAIM. A claimant is eligible under s. 108.08, Stats., for benefit purposes for any week of total or partial unemployment only if, as of the first week being claimed, the claimant notifies the department in person, by telephone if authorized by the department, or as otherwise prescribed by the department, during that week or within 7 days after the close of that week, of the claimant's intent to initiate the claim and complies with the initial and weekly filing procedures as directed by the department. Any claimant who stops filing weekly certifications for one or more weeks or who files a late weekly certification must comply with the requirements of this subsection to resume a claim.

(2) CONTINUED CLAIMS. (a) A claimant is eligible for benefits for any week of total or partial unemployment only if the claimant files a weekly certification with the department in the manner prescribed by the department, within 14 days following the end of the week for which benefits are claimed. A claimant filing either the weekly certification by telephone or mail shall comply with the procedures in subd. 1. or 2.

1. If the claimant files a weekly certification by telephone, the department shall notify the claimant during the telephone transaction for which weeks the claimant may file a weekly certification. The department shall notify the claimant at the end of the telephone transaction if the weekly certification has been accepted. If the claimant does not receive a check for the weeks claimed, or an explanation as to why benefits were not paid, within 7 days from the date the claimant entered the telephone weekly certification, the claimant shall contact the department to receive directions on how to proceed with the claim no later than 14 days following the end of the week in which the telephone weekly certification was entered.

2. If the claimant files a weekly certification by mail, the department must receive the weekly certification within 14 days following the end of the week for which benefits are claimed or 14 days following the date the department mailed the weekly certification to the claimant, whichever occurs later. If the claimant does not receive a check, or an explanation as to why benefits were not paid, within 7 days from the date the weekly certification was mailed by the claimant, the claimant shall contact the department. The claimant shall contact the department to receive directions on how to proceed with the claim within 14 days following the end of the week in which the claimant mailed the weekly certification.

(b) A claimant files a weekly certification when the department receives a completed, timely weekly certification. The department receives a certification by telephone or mail when one of the following is met:

1. The department receives a weekly certification submitted by telephone when the claimant is notified at the end of the tele-

phone transaction that the weekly certification has been accepted. An incomplete telephone weekly certification shall not be accepted. If the claimant is not notified at the end of the telephone transaction that the weekly certification has been accepted, that certification is not filed.

2. The department receives a mailed weekly certification within the timeframe established in par. (a) 2. A mailed weekly certification postmarked on or prior to the last day specified under par. (a) 2., but received by the department on a subsequent day, is not filed. A claimant files a mailed weekly certification if the department receives the certification on the next succeeding business day if the last day for filing falls on Saturday, Sunday, any of the holidays enumerated under ss. 230.35 (4) (a) and 895.20, Stats., or any other day on which mail is not delivered by the postal authorities. If a claimant submits a timely but incomplete mailed weekly certification, the department shall send the claimant a duplicate weekly certification, and that claimant shall file the duplicate weekly certification within 14 days following the date the department mailed the duplicate weekly certification to the claimant.

(c) The time periods specified in this section are extended to 19 days for claimants who claim through the interstate system.

(3) RESUMED CLAIMS. (a) A claimant who stops filing weekly certifications for one or more weeks or who files a late weekly certification for any week may resume a claim only by complying with the notice provisions of sub. (1).

(b) A claimant who submits an untimely weekly certification has stopped filing weekly certifications. A claimant is eligible for benefits for any week falling between the week for which the untimely weekly certification was submitted and the week in which the claimant notifies the department as prescribed in sub. (1) only if the day on which the notification occurs is within 14 days after the close of the week falling between the week for which the untimely weekly certification was submitted and the week in which the claimant notifies the department.

(4) WAIVER; EXCEPTIONAL CIRCUMSTANCES. The department shall waive the requirements of this chapter if exceptional circumstances exist. Exceptional circumstances include, but are not limited to, the following:

(a) An error relating to the claimant's giving of notice made by personnel of the department, or a reasonable misunderstanding by the claimant based on information given to the claimant by the department.

(b) Action by an employer, in any manner, directly or indirectly, instructing, warning or persuading the claimant not to file a benefit claim.

(c) The claimant did not comply because the claimant was not aware of the duty to notify the department and the claimant's most recent employer failed to post or maintain any notice as to claiming unemployment benefits which has been supplied to the employer as required under s. DWD 120.01.

(d) The claimant performed services as a school year employee in other than an instructional, research or principal administrative capacity and had reasonable assurance of performing services for the employer in a similar capacity in the 2nd academic year or

term but was subsequently not offered the opportunity to perform such services.

(e) The claimant made an unsuccessful attempt to access the telephone initial claims system during a week when the system was inoperable or was unavailable for more than 40% of the time the system is scheduled to be staffed by claimstakers during that week. The times during which the system is inoperable or unavailable will be measured as follows:

1. Each day during the week will be divided into half hour time periods, beginning with the time when the system is first scheduled to be staffed by claimstakers and ending with the time when the system is scheduled to no longer be staffed by claimstakers.

2. The system will be considered to be inoperable or unavailable for any such half hour time period during which a busy signal occurs or during which the system is not operating.

History: Cr. Register, July, 1984, No. 343, eff. 8-1-84; emerg. am. (1), eff. 2-2-93; am. (1), Register, July, 1993, No. 451, eff. 8-1-93; correction in (3) (e) made under s. 13.93 (am) (b) 7., Stats., Register, July, 1993, No. 451; am. (1) and (2) (a), cr. (2) (a) 1. and 2., r. and recr. (2) (b), (3) (a) and (b), r. (2) (c), (3) (g) and (4), renun. (2) (d), (3) (intro.), (c) to (f) to be (2) (c), (4) (intro.) to (d) and am. (4) (intro.), (a), (c) and (d), Register, December, 1995, No. 480, eff. 1-1-96; cr. (4) (e), Register, November, 1999, No. 527, eff. 12-1-99; correction in (2) (b) 2. made under s. 13.93 (2m) (b) 7., Stats., Register, September, 2000, No. 537; am. (2) (a) (intro.), Register, September, 2000, No. 537, eff. 10-1-00; **emerg. am. (1), eff. 4-14-02; CR 02-088; am. (1) Register November 2002 No. 563, eff. 12-1-02.**

DWD 129.02 Establishment of benefit year. (1) In order to establish a benefit year under s. 108.06 (2) (a), Stats., a claimant shall:

(a) Comply with the notification and filing requirements under s. DWD 129.01; and

(b) Have the minimum amount of wages in the claimant's base period as required under s. 108.04 (4) (a), Stats.

(2) A claimant establishing a second or subsequent benefit year shall, in addition to the requirements of sub. (1), comply with the earnings requirement of s. 108.04 (4) (c), Stats.

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; emerg. am. (1) (a), eff. 2-2-93; am. (1) (a), Register, July, 1993, No. 451, eff. 8-1-93; r. and recr. (1) (a), am. (1) (b), r. (2) and (3), cr. (2), Register, December, 1995, No. 480, eff. 1-1-96.

DWD 129.03 Backdating of benefit year; circumstances. Under s. 108.06 (2) (bm), Stats., a claimant's benefit year begins on the Sunday of the week in which the claimant meets the requirements to establish a benefit year under s. DWD 129.02, except that the department may, by rule, permit a claimant to begin a benefit year prior to that time. The department shall permit the backdating of a benefit year if an exceptional circumstance exists. Exceptional circumstances include, but are not limited to, those listed in s. DWD 129.01 (4).

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; renun. (1) to be 129.03 and am., r. (2), Register, December, 1995, No. 480, eff. 1-1-96.

DWD 129.04 Department set aside of benefit year.

(1) **EXCEPTIONAL CIRCUMSTANCES.** Under s. 108.06 (2) (d), Stats., a claimant may, in writing, request the department to set aside a benefit year. The department shall set aside the benefit year if the requirements of s. 108.06 (2) (d), Stats., are met.

(2) **OTHER CONDITIONS.** (a) If the claimant does not meet all of the requirements under sub. (1), the department may set aside the benefit year under other conditions. Other conditions include, but are not limited to, the following:

1. The department terminates coverage of an employer previously subject to ch. 108, Stats., for whom the claimant performed services in the base period and the claimant could not have foreseen this termination of coverage;

2. The department makes an error relating to the claimant's establishing of a benefit year;

3. The wage data used by the department to establish the benefit year is erroneous; or

4. The claimant elects alternative filing because the claimant's benefit year was established in the last month of a calendar quarter and benefits were paid to the claimant prior to the department advising the claimant of the choice of alternative filing.

(b) The department may not set aside a benefit year under this subsection unless the department:

1. Has recovered, or has waived the recovery of, all benefits paid to the claimant for that benefit year; or

2. Offsets this amount against benefits the claimant would otherwise be eligible to receive at the time the request to set aside a benefit year is made.

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; am. (1) (intro.), (2) (a) (intro.), 2., 3. and (b) 1., r. (1) (a) to (c), cr. (2) (a) 4., Register, December, 1995, No. 480, eff. 1-1-96.

DWD 129.05 Payment of benefits. (1) METHOD OF PAYMENT.

The department shall pay benefits by checks mailed to the claimant's address of record with the department or by electronic deposit to a claimant's designated bank account unless the benefits are applied by the department for overpayments, forfeitures, child support payments under s. 108.13, Stats., or other assignments permitted under state or federal law.

(2) **CHARGING OF PAYMENT.** The department shall charge each benefit payment against an account in the unemployment reserve fund or the administrative account and shall periodically send each employer a record of each payment charged against its account in the fund.

History: Cr. Register, November, 1989, No. 407, eff. 12-1-89; am. Register, December, 1995, No. 480, eff. 1-1-96.